

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JUN 03 2005

Michael N. Milby, Clerk of Court

ERIC A. GONZALES

VS.

CITY OF CORPUS CHRISTI, Officer M.	*
MORROW, #273, Officer M GOCE #260;	*
NUECES COUNTY, TEXAS, Deputy D.	*
GARZA, #345 __, Deputy J. ESCOBEDO	*
#7347, Deputy C. GOMEZ, Deputy C.	*
CASARES #7172, LT. E. B. HINOJOSA #5679*	
Sheriff LARRY OLIVAREZ, SR., H. E.	*
BUTT GROCERY COMPANY, H. E. B.	*
GROCERY COMPANY LP, general partner	*
HEBCO GP, and ALFRED VILLARREAL,	*
and IRMA CABRERA	Plaintiff Request a Jury Trial

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Eric A. Gonzales, Plaintiff in the above numbered and styled cause [hereinafter "Plaintiff"] and files this his Original Complaint, against Defendant City of Corpus Christi [hereinafter "City"], Defendant City of Corpus Christi Police Officer M. Morrow #273 [hereinafter "Morrow"], Defendant City of Corpus Christi Police Officer M. Goce #260 [hereinafter "Goce"], Defendant Nueces County, Texas [hereinafter "Nueces" or "County"], Defendant Larry Olivarez, Sr. [hereinafter "Olivarez"], Defendants Nueces County Sheriff Deputy, D. Garza, #345 __ [hereinafter "Garza"], Deputy J. Escobedo #7347 [hereinafter "Escobedo"], Deputy C. Gomez, [hereinafter "Gomez"], Deputy C. Casares #7172 [hereinafter "Casares"], Lt. E. B. Hinojosa #5679, [supervisor with Nueces County Sheriff's Department [hereinafter "Hinojosa"]], H. E. Butt Grocery Company and H.E.B. Grocery Company, LP, general partner HEBCO GP, [hereinafter "HEB"], Alfred Villarreal [hereinafter "Villarreal"], and

Irma Cabrera [hereinafter "Cabrera"], and would show the Court as follows:

PARTIES

1. Plaintiff is an individual residing in Nueces County, Texas and may be served with process by and through Plaintiff's attorney of record, William H. Berry, Jr. and Gail D. C. Dorn, Law Office of William H. Berry, Jr., at P. O. Box 23064, Corpus Christi, Texas 78403. Plaintiff is a person with relevant knowledge and is expected to provide testimony by deposition or live testimony at trial.

2. Defendant CITY OF CORPUS CHRISTI is a municipal corporation, incorporated in the State of Texas and situated in Nueces County, Texas. Defendant can be served with process by and through the mayor, clerk, secretary or treasurer at 1201 Leopard Street, or P. O. Box 9277, Corpus Christi, Texas 78401, 78469-9277 at the post office box. Defendant's representatives are persons with relevant knowledge and is expected to provide testimony by deposition or live testimony at trial. [Tex. Civ. Prac. & Rem. C. §17.024]

3. Defendant, M. MORROW is an individual who may be served with process at the City of Corpus Christi Police Department, 321 John Sartain, Corpus Christi, Texas 78401. Defendant is a person with relevant knowledge and is expected to provide testimony by deposition or live testimony at trial.

4. Defendant, M. GOCE, is an individual who may be served with process at the City of Corpus Christi Police Department, 321 John Sartain, Corpus Christi, Texas 78401. Defendant is a person with relevant knowledge and is expected to provide testimony by deposition or live testimony at trial.

5. Defendant NUECES COUNTY, is a county situated in the State of Texas.

Defendant can be served with process by and through the County Judge, Terry Shamsie. Defendant can be served with process at 901 Leopard Street, Third Floor, Corpus Christi, Texas 78401. Defendant's representatives are persons with relevant knowledge and is expected to provide testimony by deposition or live testimony at trial. [Tex. Civ. Prac. & Rem. C. §17.024]

6. Defendant, LARRY OLIVAREZ, SR. is the Sheriff of Nueces County, and may be served with process at the Nueces County Jail located at 901 Leopard Street, Corpus Christi, Texas 78401. Defendant is a person with relevant knowledge and is expected to provide testimony by deposition or live testimony at trial.

7. Defendant, D. GARZA, is an individual who may be served with process at the Nueces County Jail located at 901 Leopard Street, Corpus Christi, Texas 78401. Defendant is a person with relevant knowledge and is expected to provide testimony by deposition or live testimony at trial.

8. Defendant, J. ESCOBEDO is an individual who may be served with process at the Nueces County Jail located at 901 Leopard Street, Corpus Christi, Texas 78401. Defendant is a person with relevant knowledge and is expected to provide testimony by deposition or live testimony at trial.

9. Defendant, C. GOMEZ, is an individual who may be served with process at the Nueces County Jail located at 901 Leopard Street, Corpus Christi, Texas 78401. Defendant is a person with relevant knowledge and is expected to provide testimony by deposition or live testimony at trial.

10. Defendant, C. CASARES, is an individual who may be served with process at the Nueces County Jail located at 901 Leopard Street, Corpus Christi, Texas 78401.

Defendant is a person with relevant knowledge and is expected to provide testimony by deposition or live testimony at trial.

Defendant E. B. HINOJOSA Employee Number 5679 NC0134, is an individual who may be served with process at the Nueces County Jail, located at 901 Leopard Street, Corpus Christi, Texas 78401. Defendant is a person with relevant knowledge and is expected to provide testimony by deposition or live testimony at trial.

11. Defendant, H. E. BUTT GROCERY COMPANY, is a Texas corporation doing business in the State of Texas. Defendant can be served with process by serving its registered agent for service at Abel Martinez, 646 South Main Avenue, San Antonio, Texas 78204, Texas Corporation. Defendant is a person with relevant knowledge and is expected to provide testimony by deposition or live testimony at trial.

12. Defendant, H. E. B. GROCERY COMPANY LP, is a Texas limited liability corporation, whose general partner is HEBCO GP doing business in the State of Texas. Defendant can be served with process by serving its registered agent for service at Abel Martinez, 646 South Main Avenue, San Antonio, Texas 78204. Defendant is a person with relevant knowledge and is expected to provide testimony by deposition or live testimony at trial.

13. Defendant, ALFRED VILLARREAL is an individual, believed to be employed by H.E.B. No. 1 located at 4444 Kostoryz, Corpus Christi, Texas. and also believed to be the person who made a report to the City of Corpus Christi complaining about Plaintiff that resulted in Plaintiff's arrest and beating. Defendant may be served with process at the H.E.B. at 4444 Kostoryz, Corpus Christi, Texas 78415. Defendant is a person with relevant knowledge and is expected to provide testimony by deposition or

live testimony at trial.

14. Defendant, IRMA CABRERA is an individual, believed to be a medic providing medical services to Nueces County Jail. Defendant may be served with process at the Nueces County Jail, at 901 Leopard Street, Corpus Christi, Texas 78401. Defendant is a person with relevant knowledge and is expected to provide testimony by deposition or live testimony at trial.

STATEMENT OF JURISDICTION

15. This Court has jurisdiction of this cause of action under the Civil Rights Act, 42 U.S.C. §1983, et seq., 42 U.S.C. §1985, 42 U.S.C. §1988; the American's With Disabilities Act, 42 U.S.C. §12101 et seq.; common law cause of action under *Bivens*, and pendant jurisdiction of the state causes of action under the Texas Tort Claims Act, *Vernon's Civ. Prac. & Rem. C. §101.021 et seq.*, and state common law claims for slander, libel, intentional infliction of emotional distress, and negligence.

VENUE

16. Plaintiff would show that the acts, omissions, complained of herein occurred in Corpus Christi, Nueces County, Texas and venue is in Nueces County, Texas.

CONDITIONS PRECEDENT

17. Plaintiff would show that Plaintiff has complied with all conditions precedent entitling Plaintiff to assert the claims made in the petition.

FACTS

18. On or about June 3, 2004, Plaintiff was at the H. E. B. Store on Kostoryz in Corpus Christi, Nueces County, Texas. It was mid-afternoon. Plaintiff was at the H.E.B. to purchase cigarettes. Plaintiff went directly to the cashier, who obtained the cigarettes

for Plaintiff. When Plaintiff attempted to pay the cashier, he lacked \$.20 and Plaintiff informed the cashier that he would go across the street to his apartment to get more money and return to pay the balance. The cashier said "no" that Plaintiff had to leave the store. Plaintiff gave the cigarette packet back to the clerk and informed the clerk that he would return. Plaintiff left the interior of the store and while outside the store near the entrance but still on H.E.B. property, Plaintiff saw a neighbor boy and Plaintiff asked the young boy to go to Plaintiff's apartment to bring Plaintiff some change. Plaintiff waited outside the HEB store building but on HEB property, Plaintiff was approached by an HEB employee, believed to be Defendant Villarreal, who threatened to call the police to have Plaintiff arrested. Plaintiff advised Defendant Villarreal that he was waiting for someone to bring him the additional \$.20 he needed to purchase cigarettes. When boy returned with the change, Defendant Villarreal told Plaintiff that he [Plaintiff] had to go to the gas station cashier to purchase the cigarettes, which Plaintiff did.

19. When Plaintiff arrived at the HEB gas station and immediately upon purchasing the cigarettes and placing the packet in his pocket, a City of Corpus Christi police car arrived with one officer, believed to be Defendant Morrow. The police officer approached Plaintiff, physically pushed Plaintiff onto the hood of the police car, talked to Plaintiff in a rough, intimidating tone. Defendant Morrow made Plaintiff place his hands on the hood of the police car, and a second police officer arrived, believed to be defendant Goce. Defendant Goce searched Plaintiff by patting him down. During the pat down, Plaintiff's khaki long legged pants began to slip down, and Plaintiff asked the officer to hold up and Plaintiff reached down to pull up his pants. The first officer, believed to be Defendant Morrow, immediately and without warning, began hitting Plaintiff repeatedly

on the right side of the head with his baton or a sharp, hard object, behind Plaintiff's right ear and lower head and neck. The first officer began hitting Plaintiff without provocation or reason. During the beating, handcuffs were placed on the Plaintiff and were placed too tightly causing cuts and bruising and numbness because of the use and application of the handcuffs. After Plaintiff was handcuffed, Plaintiff was placed in the back of the second officer's police car.

20. Plaintiff was taken directly to the Nueces County Jail. The acceptance document prepared by Nueces County jail personnel, states that Plaintiff suffered ADDH and HTN, that Plaintiff took Xanax. The County documentation noted Plaintiff's physical injuries to his eye lid, nose and teeth. The County assesses Plaintiff's state of mind as "very agitated and angry." Nueces County accepted Plaintiff for booking and incarceration. The cigarette packet was unopened and Defendant Goce is the officer believed to be the one who took the unopened packet of cigarettes from Plaintiff and threw the packet in the trash to agitate Plaintiff. Plaintiff was incarcerated and placed in a cell. Plaintiff asked to make a telephone call and when taken to the telephone, the telephone was not operating. Because of Plaintiff's disability and medical condition, Plaintiff became very agitated, and was told that they [jail] had turned the telephone off. Plaintiff became very upset, began hitting the telephone receiver. Defendants state in their reports that Plaintiff yelled, made verbal comments calling the deputies names, and attempted to spit on defendant Escobedo, who threatened Plaintiff with a felony charge if Plaintiff "spit on him". None of the words Defendants alleged Plaintiff made were words that incited adverse or dangerous action by Plaintiff to other persons. The individual Nueces County deputies threw Plaintiff down and severely beat Plaintiff and threatened

him. The deputies accuse Plaintiff in their written reports for profane, name calling, but do not accuse Plaintiff of any threatening language other than alleging his attempt to spit on the officers. The jailers placed handcuffs on Plaintiff so tightly that the cuffs cut off the circulation in Plaintiff's hands and wrists. Plaintiff was placed in a cell with the cuffs on his hands. Because of the unnecessary beatings and aggression taken against Plaintiff by Nueces County deputies, Plaintiff became agitated and began kicking the cell door. Nueces County deputies entered the cell and threw Plaintiff to the floor, and beat him about the head and neck and beat his face against concrete surfaces. The beating is depicted in the video logs from the Nueces County jail.

21. A medic, who is believed to be Defendant Cabrera, was finally called to check Plaintiff. Defendant Cabrera failed to properly evaluate Plaintiff's mental state, failed to immediately have Plaintiff taken to an appropriate mental treatment facility, failed administer proper medical treatment, failed to contact or refer Plaintiff to a proper health care facility, physician, or health care provider for Plaintiff's injuries and medical condition. Cabrera failed to properly evaluate and provide the necessary care and treatment or medication for Plaintiff to accommodate his medical and mental condition and allowed Plaintiff to remain agitated state and to be placed in situations that aggravated and exacerbated his mental and physical condition.

22. Plaintiff suffered severe physical injury including but not limited to, cuts and lumps behind the right ear, which lump remains to this day; broken teeth causing Plaintiff to bleed from the mouth while in the Defendants custody. Plaintiff suffered cuts, bruises, swelling, and damage to both his wrists and hands. Plaintiff suffered injuries to both his left and right eyes, to the extent that they were swollen shut. Plaintiff was cut on

his upper check and left eye and nose. Plaintiff suffered a swollen right ear. Plaintiff had several lumps caused from the trauma to his entire head.

23. The Nueces County Sheriff Department records concerning Plaintiff's incarceration reveal from reports prepared by Defendants Gomez, Escobedo, Garza, and Casares, that while Plaintiff was incarcerated in a holding cell, that in an excessive attempt to restrain Plaintiff, he was hand cuffed and shackled at the direction of Defendant Hinojosa. That Defendants Casares and Escobedo placed Plaintiff in the holding cell whereupon they reported that Plaintiff began kicking and punching the cell door. They report and the video reveals that Plaintiff, upon discovering that the telephone given to him to use was inoperable, that Plaintiff began hitting the receiver. They left Plaintiff in the cell unattended. Defendant Escobedo reports that Defendant Garza entered the holding cell, ordered Plaintiff to place his hands behind his back, and that Garza began to struggle with Plaintiff, they went to the floor, Escobedo held Plaintiff by his shoulders, and held Plaintiff down while they placed handcuffs and shackles on Plaintiff. Defendant Casares reports that he assisted Defendant Escobedo in the cell when Plaintiff was beaten. Escobedo reports that he informed Plaintiff if he [Plaintiff] spit on him [Escobedo], Plaintiff would be charged with a felony. Defendant Gomez reports that Defendants Garza, Escobedo and Casares are the officers who applied the cuffs and shackles. The reports state that Defendants Garza and Gomez applied the cuff and shackles. The video of the incident reveals that the Defendants in fact punch and beat Plaintiff's head against a concrete surface.

24. At the time of the incident, Plaintiff was living by himself. After the incident, Plaintiff moved back to live with his grandparents. I had to stay at home because

of the injuries, and my grandmother helped care for me.

25. While Plaintiff was in the custody and care of Nueces County, the County failed to transport or obtain treatment or care from a health care provider. Nueces County and the City failed to transport Plaintiff to the hospital or a doctor or clinic where Plaintiff could be treated for his injuries. The City and Nueces County failed to provide Plaintiff with minimal, reasonable, and necessary medical care or treatment at the time Plaintiff was brought to the County, for his injuries that were inflicted by the City police officers. The County failed to provide Plaintiff minimal, reasonable, and necessary medical care or treatment for the injuries inflicted by Nueces County personnel while Plaintiff was in their custody and control. After Plaintiff's release from custody, Plaintiff was taken to Christus Spohn Memorial hospital emergency room for treatment.

26. Plaintiff is 26 years old, and was 25 years old at the time of the incident. Plaintiff suffers from Attention Deficit Disorder and hyperactivity. When Plaintiff is upset or confronted in a forceful or aggressive manner, he becomes agitated and upset, but when he is handled in a calm manner, he remains calm. Plaintiff has difficulty being in enclosed areas, such as a cell, and needs space and light. Defendant knew that Plaintiff suffered from Attention Deficit Disorder and hypertension. Defendants knew of Plaintiff's condition because it appears in the records created by Defendants.

27. Plaintiff was wrongfully charged with resisting arrest, resisting search and "RMG". The charges were not pursued against Plaintiff and were dismissed.

28. Plaintiff was lawfully on the property at HEB to purchase cigarettes. When informed that he needed an additional \$.20, he sent a neighbor to his apartment to pick up change and return it to the HEB store, and waited outside the HEB store for his neighbor

to return. HEB personnel, unnecessarily, maliciously, and knowingly called the police and reported activity that was neither unlawful nor constituted probable cause resulting in the action taken by Defendants City, Goce, and Morrow or of the wrongful detention, subsequent arrest and incarceration of Plaintiff. It was HEB personnel's plan for Plaintiff to be unlawfully detained and subsequently arrested by (1) ordering Plaintiff to leave the store while he waited for the balance of money to pay for the cigarettes, (2) disallowing Plaintiff to return to the interior of the store to complete the purchase, (3) sending Plaintiff to the gas station to purchase the cigarettes, knowing the police would be there to detain and arrest Plaintiff, (4) providing and setting up easy access for the police to wrongfully detain, arrest and subsequently incarcerate Plaintiff, (5) reporting incorrect information to the police for the purpose of having the police wrongfully detain and arrest Plaintiff, which resulted in Plaintiff being beaten and incarcerated. Plaintiff committed no wrongful acts while in the interior of the store attempting to purchase cigarettes, nor while he waited outside the store for his friend to bring \$.20 so he could complete his purchase.

29. Defendants acts, omissions, and conduct which give rise to Plaintiff's causes of action include but are not limited to (1) failing to properly assess and have proper facilities and conditions of confinement for persons with mental disabilities; (2) denying Plaintiff his special needs before his injury, (3) denying or delaying treatment for Plaintiff after his injury, (4) failing to provide Plaintiff with a safe place and the conditions of confinement, (5) failing to provide Plaintiff adequate medical treatment for his serious medical needs, (6) ignoring information and evidence of Plaintiff's mental and medical condition and refusing to provide him proper medical treatment or provisions at

the jail; (7) failing to provide the Plaintiff with the proper and necessary medical attention and hygiene while incarcerated in Defendants' jail; (8) failing to provide Plaintiff with a reasonable accommodation or assistance while Plaintiff was incarcerated; (9) preventing Plaintiff from receiving proper medical treatment and assistance and accommodation; and (10) allowing Plaintiff to be injured and then suffer unnecessary physical pain and mental anguish then wrongfully punish Plaintiff for conduct that was a result of his condition. Additionally, Defendants gathered information placing Defendants on notice of Plaintiff's condition, which should have been accommodated rather Defendants acts which aggravated or exacerbated Plaintiff's condition.

VIOLATIONS CIVIL RIGHTS ACT – 42 U.S.C. §1983

4TH Amendment, 5th Amendment, and 14th Amendment

30. Plaintiff relies upon the facts as stated in the "Facts" paragraphs in support of his causes of action for violations of his civil rights, and the facts are incorporated herein as if fully set forth. Defendants City, Goce, and Morrow, violated Plaintiff's civil rights under the 42 U.S.C. §1983. Defendants conduct is in violation of the fourth amendment of the United States Constitution because the Plaintiff was unlawfully stopped and detained, was unlawfully and wrongfully arrested and detained without probable cause or justification. Plaintiff would further show that excessive force was used against the Plaintiff by Defendants "City", Goce, and Morrow. Plaintiff suffered from a serious medical and mental condition for which Defendants knew or should have known, and who failed to take the necessary care and subsequently aggravated or exacerbated Plaintiff's mental and medical condition. Defendants Villarreal, HEB, Morrow and Goce entered into a conspiracy to cause violate the Plaintiff's civil rights and to deny Plaintiff

his constitutional rights as guaranteed by the United States Constitution and the Constitution of the State of Texas.

31. As a result of the Defendants concerted unlawful and malicious abuse of the Plaintiff, Defendants intentionally, or with deliberate indifference and callous disregard of the Plaintiff's rights deprived Plaintiff of his constitutional rights, in violation of the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution.

32. As a result of the Defendants concerted unlawful and malicious detention, arrest, and incarceration, of Plaintiff, Defendants intentionally, or with deliberate indifference and callous disregard of the Plaintiff's rights deprived Plaintiff of his constitutional rights, in violation of the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution.

33. The Defendants conduct in the unlawful arrest and detention and confinement of the Plaintiff and the misuse of tangible personal property, I. e. handcuffs, and an object used in physically beating Plaintiff and the physical abuse of the Plaintiff constitutes excessive force in violation of both Texas and Federal law. Defendants violated the Plaintiff's rights to be free from excessive force and unlawful arrests and detentions without probable cause, in violation of the Plaintiff's Fourth and Fourteenth Amendment Rights.

34. The Defendants wrongful conduct, acts and omissions and constitutional violations are the proximate and producing cause of Plaintiff injuries and damages alleged herein.

35. Defendants failed to have proper facilities, policies, and procedures to evaluate, immediately transfer, properly and safely process, or accommodate persons with

disabilities such as the Plaintiff.

36. All Defendants were acting under color of law and pursuant to official policy or custom. Defendants City, Olivarez, and Hinojosa, knowingly, recklessly, or with deliberate indifference, maliciousness, and calloused disregard of Plaintiff's rights. Defendants (1) failed to have proper policy and procedures to identify mental and medical conditions for persons being detained, arrested, and/or incarcerated, by the City or County; (2) adopted and enforced policy and procedures that are unconstitutional; (3) applied policy and procedures in an unconstitutional manner; (4) failed to instruct, supervise, control, and discipline, on a continuing basis personnel from the police department and from the Nueces County jail, and specifically defendants Morrow, Goce, Garza, Escobedo, Gomez, Casares, and Hinojosa in the operation and proper policies and procedures to be followed with disabled individuals, (5) failed to properly train, implement proper procedures that would protect against constitutional violations; (6) failed to have the proper procedures and policies to protect citizens from having their civil rights violated; (7) failed to follow, enforce, or train and knowingly disregarded policies and procedures to protect citizens such as the Plaintiff from constitutional violations; (8) applying policies and procedures in an unconstitutional manner, (9) and otherwise depriving Plaintiff of his constitutional and statutory, rights, privileges, and immunities.

37. Defendants City, Olivarez, and Hinojosa had knowledge or, had they diligently exercised their duties to instruct, supervise, control, and discipline on a continuing basis, should have had knowledge that the wrongs conspired to be done, as heretofore alleged, were about to be committed. Defendants and the City and County had the power and duty to prevent or aid in preventing the commission of said wrongs, could

have done so by reasonable diligence, and knowingly, recklessly, or with deliberate indifference and callous disregard of Plaintiff's rights failed or refused to do so. Such conduct was malicious.

38. Defendants City and Olivarez directly or indirectly, under color of law, approved or ratified the unlawful, deliberate, malicious, reckless, and wanton conduct of Defendants in the detention, arrest, citing, cuffing, and confinement of Plaintiff.

39. As a direct and proximate and producing cause of the Defendants conduct herein, Plaintiff has suffered the damages asserted in this Complaint.

**8TH Amendment, 5TH Amendment and 14TH Amendment –
Excessive Force and Inadequate Medical Care**

40. Plaintiff would show that the Defendants County, Olivarez, and Garza, Escobedo, Gomez, Casares, Cabrera, and Hinojosa violated Plaintiff's civil rights under the 42 U.S.C. §1983, because Defendants conduct violates Plaintiff's Eighth Amendment rights of the United States Constitution for use of excessive force during Plaintiff's incarceration at the Nueces County Jail.

41. Plaintiff would show that the Defendants County, Olivarez, and Garza, Escobedo, Gomez, Casares, Cabrera, and Hinojosa, violated Plaintiff's civil rights under the 42 U.S.C. §1983, because Defendants conduct violates Plaintiff's Eighth Amendment rights of the United States Constitution for failure to provide adequate medical care and treatment for Plaintiff's mental and medical condition and for the injuries inflicted by the City and City personnel at the time of arrest, when Plaintiff was brought to the Nueces County jail, and after Plaintiff's condition deteriorated while incarcerated at the Nueces County jail. Defendants County and Garza, Escobedo, Gomez, Casares, Cabrera, and Hinojosa, violated Plaintiff's civil rights under the Eighth Amendment for failing to

provide adequate medical care for the injuries to Plaintiff inflicted by the County and Garza, Escobedo, Gomez, Casares, Cabrera, and Hinojosa, while Plaintiff was incarcerated in the Nueces County jail.

42. Plaintiff would show that the Defendants County, Olivarez, and Garza, Gomez, Escobedo, Cabrera, Casares and Hinojosa's violated Plaintiff's civil rights under 42 U.S.C. §1983, because Plaintiff had serious mental and medical needs at the time of his arrest, before his incarceration and after he was incarcerated at the County jail. Defendants knew or should have known of Plaintiff's mental and medical needs yet they intentionally, willfully, and with deliberate indifference and maliciously disregarded the Plaintiff's mental and medical needs and condition which constituted an excessive risk to the Plaintiff's health and welfare. Defendants should have (1) proper policies and procedures to identify mental and medical conditions for persons being detained, arrested, and/or incarcerated, by the City or County; (2) adopt and enforce policy and procedures that protect persons constitutional rights; (3) apply policy and procedures in a constitutional manner. Defendants conduct, acts and omissions alleged above, were intentional, willful, done with deliberate indifference, and done maliciously, all of which constitutes cruel and unusual punishment in violation of the eighth amendment of the United States Constitution. Such conduct, acts and omissions, are the proximate and producing cause of Plaintiff injuries and damages alleged herein.

43. As a result of the Defendants County, Olivarez, and Garza, Gomez, Escobedo, Cabrera, Casares and Hinojosa's concerted unlawful and malicious abuse of the Plaintiff during Plaintiff's incarceration, Defendants intentionally, or with deliberate indifference and callous disregard of the Plaintiff's rights deprived Plaintiff of his

constitutional rights, in violation of the Eighth, Fifth, and Fourteenth Amendments of the United States Constitution.

44. As a result of the Defendants County, Olivarez, and Garza, Gomez, Escobedo, Cabrera, Casares and Hinojosa's concerted unlawful incarceration, of Plaintiff, Defendants intentionally, or with deliberate indifference and callous disregard of the Plaintiff's rights deprived Plaintiff of his constitutional rights, in violation of the Eighth, Fifth, and Fourteenth Amendments of the United States Constitution.

45. Defendants County, Olivarez, and Garza, Gomez, Escobedo, Cabrera, Casares and Hinojosa's concerted unlawful failure to provide adequate mental and medicare evaluation and care to Plaintiff, was done intentionally, or with deliberate indifference and callous disregard of the Plaintiff's rights, and deprived Plaintiff of his constitutional rights, in violation of the Eighth, Fifth, and Fourteenth Amendments of the United States Constitution.

46. Defendants failed to have proper facilities, policies, and procedures to evaluate, immediately transfer, properly and safely process, or accommodate persons with disabilities such as the Plaintiff.

47. Acting under color of law and pursuant to official policy or custom, Defendant Olivarez and Defendant Nueces County, knowingly, recklessly, or with deliberate indifference, maliciousness, and calloused disregard of Plaintiff's rights, failed to instruct, supervise, control, and discipline, on a continuing basis Defendants in the operation and condition of the jail, and in their duties. Defendants (1) failed to adopt and have in place a plan to evaluate and properly handle those persons brought to the Jail who have special needs because of a disability or mental condition, (2) failed to follow

necessary and minimal policies and procedures in evaluating and handling disabled persons or persons with a mental condition, (3) failed to adopt, interpret, enforce policies that are unconstitutional, (4) adopted, interpreted and enforced policies in an unconstitutional manner, (5) unlawfully and maliciously harass and mistreat persons who are incarcerated in the jail and under their supervision and control; (6) unlawfully and maliciously mistreat persons incarcerated who are acting in accordance with the person's constitutional and statutory rights, privileges, and immunities; (7) unlawfully and maliciously failing to accommodate and then mistreated and denied Plaintiff his rights and remedies while incarcerated in the jail; (8) conspired with others to violate the rights, privileges, and immunities guaranteed to Plaintiff by the Texas and United States Constitutions; (9) otherwise deprived Plaintiff of his constitutional and statutory, rights, privileges, and immunities.

48. Defendants Olivarez, Nueces County and Hinojosa had knowledge or, had they diligently exercised their duties to instruct, supervise, control, and discipline on a continuing basis, should have had knowledge that the wrongs conspired to be done, as heretofore alleged, were about to be committed. Defendants and the County had power to prevent or aid in preventing the commission of said wrongs, could have done so by reasonable diligence, and knowingly, recklessly, or with deliberate indifference and callous disregard of Plaintiff's rights failed or refused to do so. Such conduct was malicious.

49. Defendants Olivarez, Nueces County and Hinojosa directly or indirectly, under color of law, approved or ratified the unlawful, deliberate, malicious, reckless, and wanton conduct of Defendants and the operation and condition of the jail heretofore

described.

50. As a direct and proximate and producing cause of the Defendants conduct herein, Plaintiff has suffered the damages asserted in this Complaint.

1st Amendment

51. Plaintiff would show that during his incarceration at the Nueces County jail, contained in the jail records relating to Plaintiff's confinement, County sheriff personnel report that Plaintiff used profane, insulting language that was not designed nor of the nature to incite violence nor was it necessarily directed at any particular sheriff deputy. For example, Defendant Escobedo reports that he told Plaintiff if he [Plaintiff] spit on him [Escobedo] that Plaintiff would be charged with a felony. The records reflect that a pattern of adverse action taken against Plaintiff that he was severely beaten and restrained because of words Plaintiff said while incarcerated. The words consisted of complaints that the handcuffs were severely damaging his hands and wrists, that the telephone given to Plaintiff to use was inoperable, complaints when excessive force was being used against Plaintiff. Plaintiff's speech involves a matter of public concern because Plaintiff was complaining about the conditions and treatment received at the Nueces County jail. Plaintiff was exercising his First Amendment rights to inform and complain of his treatment and the beatings that he sustained at the hands of law enforcement personnel.

FEDERAL COMMON LAW VIOLATION CIVIL RIGHTS

52. Plaintiff would show that the facts as alleged in the "FACTS" paragraphs constitute liability by the Defendants City, County, Olivarez, Goce, Morrow, Garza, Gomez, Escobedo, Cabrera, Casares, and Hinojosa, because defendants violated federal law and Plaintiff's civil rights under the Fourth, Fifth, Eighth, Fourteenth Amendments of

the United States Constitution, and violated rights under federal statutes, which conduct by the Defendants is a proximate and producing cause of Plaintiff's damages alleged herein. Plaintiff brings this cause of action under common law pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971).

VIOLATIONS OF THE AMERICAN'S WITH DISABILITIES ACT – 42 U.S.C. §12101

53. Plaintiff is a qualified individual pursuant to 42 U.S.C. §12131(2). Plaintiff is an individual who, suffers from a defined medical condition, that defendants City, County, Olivarez, Morrow, Goce, Gomez, Garza, Escobedo, Casares, Cabrera, and Hinojosa, knew about and failed to accommodate or to provide adequate care and treatment. Plaintiff suffers from Attention Deficit Disorder (ADHD) and other mental conditions which Defendants failed to properly identify, evaluate, and handle Plaintiff when he was initially detained, when he was arrested, and during the period of his incarceration. Plaintiff was not reasonably accommodated, suffers from a severe disability that affects one or more major life activities. Plaintiff is qualified for services or would be qualified for services within the Nueces County jail or transferred to an appropriate mental facility when he was wrongfully detained and arrested by City police, when he was brought to the jail, and after he was incarcerated and continued to experience and exhibit his mental condition and suffer from his medical and mental condition. Plaintiff was excluded and denied benefits and accommodations and proper mental evaluation and treatment because of his disability. Defendants' acts, omissions, and wrongful conduct set forth in the "Facts" paragraphs above, constitute violations of the ADA and are the proximate and producing cause of Plaintiff's injuries and damages alleged herein.

54. HEB is in violation of the ADA by (1) failing to have in effect proper policies and procedures in place to handle customers, such as Plaintiff, who suffer from mental and/or medical conditions, (2) having a policy and procedure that does not properly accommodate or handle persons with mental or medical conditions, (3) failing to properly enforce a policy dealing with customers suffering from mental or medical conditions. Alternatively, HEB's policy, procedure, or practice calling law enforcement to deal with customers suffering from a mental or medical condition does not comply with the requirements of the ADA.

CONSPIRACY TO VIOLATE CIVIL RIGHTS 42 U.S.C. §1985

55. The conduct of the Defendants City, Goce, Morrow, Villarreal, and HEB as set forth in the "FACTS" paragraphs, *supra*, constitutes a conspiracy to violate the Plaintiff's civil rights, which was entered into knowingly, maliciously, or with conscious indifference to the rights of Plaintiff and for the purpose to violate Plaintiff's civil rights. The defendants acted in concert to commit an unlawful act or to commit a lawful act by unlawful means, whereby they agreed to inflict an injury on Plaintiff and Defendants conduct resulted in Plaintiff's damage. The conspiracy was the proximate cause of the violation of Plaintiff's constitutional rights and damages alleged herein. Plaintiff was deprived of his Fourth Amendment rights because he was subjected to an unlawful search and seizure, because excessive force was used in detaining and arresting Plaintiff by the City, Goce and Morrow, because he was wrongfully arrested, wrongfully imprisoned and incarcerated in the Nueces County jail. Plaintiff's Eighth Amendment rights were violated because he was deprived to proper medical care and treatment for the injuries he sustained that were inflicted by the City and Morrow, and for the injuries he sustained

while incarcerated in the Nueces County jail at the hands of Nueces County and its personnel. He was deprived of his due process rights under the Fifth and Fourteenth Amendments because he was wrongfully detained, arrested, imprisoned, beaten, without being properly magistrated or evaluated, in violation of the American's with Disabilities Act and under the Rehabilitation Act.

VIOLATIONS OF TEXAS TORT CLAIMS ACT

56. Plaintiff would show that the facts alleged in the "FACTS" paragraph, *supra*, constitute violations by the Defendants City, County, Morrow, Goce, Olivarez, Garza, Escobedo, Gomez, Casares, and Hinojosa constitute a violation of the Texas Tort Claims Act, *V.T.C.A. Civil Practice & Remedies Code §101.021 et seq.* Plaintiff suffered grievous personal injuries caused by the wrongful act or omission or negligence caused by the condition or use of tangible personal property. Additionally Plaintiff suffered personal injuries from the City and County and from employees of the Defendants County and City by reason of the employees' negligence, wrongful act or omission because the employees would be personally liable to Plaintiff according to Texas law. The wrongful conduct, acts, and omission of the Defendants is the proximate and producing cause of the Plaintiff's damages alleged herein.

NEGLIGENCE

57. Plaintiff would show that the conduct, acts and omissions of the Defendants Villarreal and HEB as set forth in the "FACTS" paragraphs, *supra*, constitutes negligence, which is the proximate cause of Plaintiff's damages alleged herein, for an amount within the jurisdictional limits of this court.

58. Plaintiff would show that HEB (1) failed to have in effect proper policies

and procedures in place to handle customers, such as Plaintiff, who suffer from mental and/or medical conditions, (2) had policies, procedures, or practices and customs that did not conform to state or federal law, and (3) failed to properly enforce policies, procedures, state and federal law, or practices or customs in handling persons with mental or medical conditions.

INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS

59. Plaintiff would show that the conduct and actions of individual Defendants and HEB constitutes intentional infliction of emotional distress that is a proximate and producing cause of Plaintiff's damages in an amount within the jurisdictional limits of this court.

SLANDER AND LIBEL

60. Plaintiff believes that Defendants HEB and Villarreal made false statements to City police for the purpose of having the Plaintiff detained, severely beaten, arrested and ultimately incarcerated. Plaintiff was lawfully on the HEB premises for a lawful purpose, was taking no action giving rise to the necessity to call police. Plaintiff believes that because of a false report given to police by Defendants Villarreal and HEB, constitutes slander and slander per se, for which Plaintiff was damaged.

MALICE

61. Plaintiff would show that the conduct of the individual defendants and Defendant HEB constitutes malice, which is the proximate and producing cause of Plaintiff's damages alleged herein and entitles Plaintiff to recover exemplary damages for Plaintiff's state causes of action, as provided by *Vernon's Civ. Prac. & Rem. C.* §41.001 (6), §41.002 and §41.003. Plaintiff would further show that the malice can be inferred

from the conduct itself. Plaintiff seeks damages in an amount within the jurisdictional limits of this court.

DAMAGES

62. Plaintiff would show that as a proximate and producing cause of Defendants' conduct, acts, or omissions, as set forth in the 'FACTS" paragraphs, *supra*, Plaintiff has suffered the following elements of damages:

- a. Physical pain and mental anguish in the past and that will in all likelihood be incurred in the future;
- b. Loss of earning capacity in the past and that will in all likelihood be incurred in the future;
- c. Disfigurement in the past and that will continue into the future;
- d. Physical impairment in the past and that will in all likelihood continue into the future;
- e. Medical care and hospital, doctor, and reasonable, necessary and customary costs and expenses for his medical care and treatment in the past and that will in all likelihood be incurred in the future.
- f. Loss of and damage to Plaintiff's personal property;
- g. Plaintiff's out of pocket expenses;
- h. Plaintiff's consequential damages;
- I. Litigation costs and expenses, and expert fees and expenses.

Plaintiff reserves the right to replead and allege further elements of damages, and Plaintiff alleges damage in an amount within the jurisdictional limits of this court.

ATTORNEY FEES 42 U.S.C. §1988

63. The undersigned attorneys have been retained by plaintiff to pursue the cause of action alleged herein. Plaintiff is entitled to recover attorney fees; which are reasonable and necessary in this cause. The undersigned counsel, William H. Berry, Jr. and Gail D. C. Dorn are expected to testify as expert witnesses at the time of trial as to the reasonable and necessary incurrence of said attorney fees. These attorney's fees are:

- a. Reasonable and necessary attorney fees for the preparation and trial of this cause.
- b. Reasonable and necessary attorney fees for an appeal to the Court of Appeals or Circuit Court.
- c. Reasonable and necessary attorney fees for making or responding to an appeal or writ of certiorari to the United States Supreme Court; and
- d. Reasonable and necessary attorney fees for making or responding to a certified question to the Texas Supreme Court; and
- e. Reasonable and necessary attorney fees for an appeal to the United States Supreme Court in the event an appeal or writ of certiorari is granted.
- f. Reasonable and necessary attorney fees for collection of the judgment in this case or fees incurred upon remand of the case by any appellate court for a redetermination of all or any portion of a judgment.

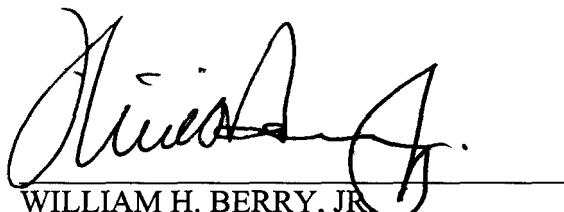
INTEREST

64. Plaintiff is entitled to recover prejudgment and post judgment interest at the highest rate allowed by law.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon a trial on

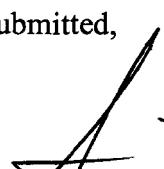
the merits, that Plaintiff be awarded Plaintiff's actual and exemplary damages, reasonable and necessary attorney fees, prejudgment and post judgment interest at the highest rate allowed by law, costs of court, and dispense with the requirement for payment of the library fee and dispute resolution fees, and for all other relief to which Plaintiff is entitled in law and equity and which may arise from the pronouncement from the Court of Appeals, Texas Supreme Court, United States District and Circuit Courts, and United States Supreme Court pending the litigation or appeal of this matter.

Plaintiff requests a jury trial.



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Texas Bar No. 02251000
Federal I.D. No. 1155

Respectfully submitted,



GAIL D. C. DORN
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Texas Bar Card No. 06007350
Federal ID: 16311

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Eric A. Gonzales

(b) County of Residence of First Listed Plaintiff Nueces
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS City of Corpus Christi, M. Morrow, M. Goce, Nueces County, J. Escobedo, C. Gomez, C. Casares, E.B. Hinojosa, Larry

Nueces

County of Residence of First Listed

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

(c) Attorney's (Firm Name, Address, and Telephone Number)

William H. Berry, Jr.,
P. O. Box 23064, Corpus Christi, Texas 78403
(361) 888-5568

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PLA	DEF	PLA	DEF	
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Jdgmn. <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
			LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl Ret Inc Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
				FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or <input type="checkbox"/> 5 Reopened	Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Plaintiff has a mental condition and was wrongfully detained, arrested, incarcerated, beaten. 42 U.S.C. 1983, and 12101

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S)

IF ANY (See instructions):

DATE

6/3/05

JUDGE

DOCKET NUMBER

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY